

**CITY OF PIKEVILLE  
BOARD OF COMMISSIONERS  
REGULAR MEETING MINUTES  
September 14, 2009 AT 6:00 P.M.**

The Board of Commissioners for the City of Pikeville met in a regular called session on Monday, September 14, 2009. The meeting was held in the City Hall Conference Meeting Room located at 118 College Street, Pikeville, Kentucky.

There being a quorum present, Mayor Franklin D. Justice called the meeting to order at: 6:00 p.m. Commission Members present at roll call were a follows:

**COMMISSIONER:**           **GENE DAVIS**  
                                  **BARRY CHANEY**  
                                  **DALLAS LAYNE**   Absent  
                                  **JIMMY CARTER**

**MAYOR:**                   **FRANKLIN D. JUSTICE, II**

**MINUTES**

The minutes for the previous regular meeting held on August 24, 2009 were in each Commission Member's agenda package. There being no additions or corrections, Commissioner Chaney made the motion to approve the minutes as prepared. Commissioner Carter seconded the motion. Mayor Frank Justice called for discussion, there being none the motion carried unanimously. 4-0

**PAYMENT OF CITY BILLS**

A list of City Bills totaling \$762,765.32 was presented to the Commission for approval of payment. Commissioner Davis made the motion to approve. Commissioner Carter seconded the motion. Mayor Frank Justice called for discussion. City Manager Donovan Blackburn explained the total included payment for city services and the blacktop for city streets. Mayor called for further discussion, there being none the motion carried unanimously. 4-0

**OLD BUSINESS**

A. Melanie Stevens was present with the Big Sandy Area Development District. Mrs. Stevens reported that the Marion Branch Sewer project was in the final steps. The BSADD was also working with city staff members on the KY Flood Control Project Mitigation Grant.

City Manager added that Melanie, Pro Team Mayor and himself would be traveling to Frankfort to go over the CDBG application on September 22, 2009. Mrs. Stevens added that the paperwork would be returned for the commission to approve and have the mayor sign.

- B. 1. City Engineer's Report: Jack Sykes was present with Summit Engineering, Inc. Mr. Sykes submitted pay request #6 to Mountain Enterprises, Inc. in the amount of \$170,689.46 and authorize the mayor to sign on the Thompson Road Widening Project. Commissioner Carter made the motion to approve. Commissioner Davis seconded the motion. Mayor Justice called for further comments, there being none the motion passed unanimously. 4-0.**
- 2. Consider request to discuss with the PMC architect the relocation of utility project for the Pikeville Medical Center construction project. Mr. Sykes stated the center had a large facility in front of property and the hospital needed to reroute the water and sewer lines and possible relocate or add a pump station. The request would include leaving the pump station that operated PMC to operate the current facility. Commissioner Chaney made the motion to approve. Commissioner Carter seconded the motion. Mayor Justice called for additional comments, there being none the motion passed unanimously. 4-0.**
- 3. Mr. Sykes reported that the Thompson Road Widening Project is progressing nicely. The area should be ready for pavement soon. Mayor asked for additional comments. City Manager reported the final property had been negotiated and was ready for the mayor to sign and be recorded at the county clerk. Mayor Justice called for additional comments there being none.**
- C. 1. City Attorney Russell Davis gave a 2nd reading of an ordinance of Ordinance #0-2009-022 for the City of Pikeville Cable Franchise Agreement.**

ORDINANCE NO. 0-2009-022

AN ORDINANCE CREATING A TEN (10) YEAR, NONEXCLUSIVE FRANCHISE FOR A CABLE SYSTEM WITHIN THE CONFINES OF PIKEVILLE, SAID FRANCHISE PROVIDING FOR: FULL FINANCIAL AND SHAREHOLDER DISCLOSURE; INDEMNIFICATION BY THE FRANCHISE GRANTEE AND ADEQUATE INSURANCE COVERAGE; A LETTER OF CREDIT OR PREFORMANCE BOND;; REQUIREMENTS FOR TESTING THE SYSTEM AND MEETING MINIMUM OPERATIONAL STANDARDS AND PROVIDING LIQUATED DAMAGES FOR VIOLATIONS THEREOF; CONDITIONS OF ROAD OCCUPANCY, USE OF POLES AND CONSTRUCTION STANDARDS; MINIMUM REQUIREMENTS FOR EXTENDING THE SYSTEM; PUBLIC BENEFIT SERVICES; ACCESS TO COMMUNITY FACILITIES; EDUCATIONAL AND GOVERNMENT

ACCESS CHANNEL; EMERGENCY ALERT OVERRIDE; TESTING AND ANALYZING THE SYSTEM AND PROOF OF PERFORMANCE; ESTABLISHMENT OF CONSUMER SERVICES STANDARDS; ESTABLISHMENT OF STANDARDS FOR BILLING PRACTICES; ESTABLISHMENT OF A COMPLIANCE PROCEDURE; REFUNDS TO SUBSCRIBERS FOR FAILURE OF SERVICE; APPROVAL REQUIRED FOR A TRANSFER OF CONTROL; STANDARDS PROVISIONS; RESERVING GOVERNMENT RIGHTS IN THE FRANCHISE; ASSURANCES OF NONDISCRIMINATION AND EQUAL OPPORTUNITY IN EMPLOYMENT; PROTECTIONS OF SUBSCRIBER PRIVACY; AND GOVERNMENT ACCESS TO PROPERTY AND RECORDS.

BE IT ORDAINED BY THE PIKEVILLE CITY COMMISSION:

That this Ordinance be and hereby is adopted as the "Cable Television Ordinance" for the city of Pikeville:

#### TABLE OF CONTENTS

1. DEFINITIONS
2. FINANCIAL, CONTRACTUAL, SHAREHOLDER AND SYSTEM DISCLOSURE
3. APPLICATIONS FOR NEW FRANCHISES
4. GRANT OF NONEXCLUSIVE AUTHORITY
5. DURATION AND ACCEPTANCE OF FRANCHISE
6. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCE
7. LIABILITY AND INSURANCE
8. PERFORMANCE BOND
9. PAYMENT TO THE GOVERNMENT
10. LIQUIDATED DAMAGES
11. CONDITIONS OF ROAD OCCUPANCY
12. ERECTION, REMOVAL AND COMMON USES OF POLES
13. CONSTRUCTION STANDARDS AND SPECIFICATIONS
14. LINE EXTENSIONS
15. EDUCATIONAL AND GOVERNMENT (EG) ACCESS CHANNEL
16. EMERGENCY ALERT OVERRIDE AND CHANNEL RESERVED
17. ANTENNAS AND ANTENNA SWITCHES
18. STANDBY POWER
19. PROOF OF PERFORMANCE TESTING
20. PROOF OF PERFORMANCE RECORDS
21. PERFORMANCE EVALUATION SESSIONS
22. OPERATIONAL STANDARDS
23. CONSUMER SERVICE STANDARDS
24. COMPLAINT PROCEDURE
25. REFUNDS TO SUBSCRIBERS AND USERS
26. DISCONNECTION
27. PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED: BILLING PRACTICES
28. TRANSFER OF CONTROL
29. FORFEITURE OF FRANCHISE
30. GOVERNMENT RIGHTS IN FRANCHISE
31. REPORTS AND FILINGS
32. FRANCHISE RENEWAL
33. RIGHTS OF INDIVIDUALS
34. RATES, MINIMUM TIMING OF REQUESTS AND DETERMINATION OF AUTHORITY
35. SUPERVISION OF THE FRANCHISE
36. GOVERNMENT'S RIGHT OF INTERVENTION
37. FURTHER AGREEMENT AND WAIVER BY GRANTEE
38. PUBLICATION COSTS
39. LAW GOVERNS
40. SEVERABILITY
41. TIME IS OF THE ESSENCE
42. FORCE MAJEURE

43. EFFECTIVE DATE

Section 1. DEFINITIONS

- (a) “Applicant” means a person or party which is applying for a new franchise. Grantees submitting proposals for franchise renewals shall not be considered Applicants.
- (b) “Basic Cable Service” shall have the meaning in this Ordinance as it is defined in Section 602(3) of the Communications Act of 1934, as it may be amended.
- (c) “Cable Service” or “Cable Television Service” means the one-way transmission to Subscribers of (i) video programming, or (ii) other programming service; and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- (d) “Cable System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designated to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any public right-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Federal Communications Act, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with Section 653 of the Communications Act, 47 U.S.C. § 573; or (5) any facilities of any electric utility used solely for operating its electric utility systems.
- (e) “City Commission” means the City Commission of Pikeville.
- (f) “Communications Act” means the Communications Act of 1934, as amended from time to time (47 U. S.C. § 151 et seq.).
- (g) “Equipment and apparatus” means any manholes, underground conduits, poles, cables, boxes, wires, fixtures, conductors, or other facilities necessary, essential, used or useful to and operated by the Cable System.
- (h) “FCC” means the Federal Communications Commission, or its lawful successor.
- (k) “Franchise fee” means for the purposes of this Ordinance the fee imposed on Grantee by Section 9 of this Ordinance as compensation for Grantee’s use of public rights-of-way and roads. Use of this definition in this Ordinance is without prejudice to any rights Grantee or Government may have under the Communications Act as it may be amended.
- (l) “Government” means (unless otherwise specified) Pikeville, a municipal corporation created pursuant to the Kentucky Revised Statutes, as it now exists in its present territorial limits, or may hereafter be extended or reduced, and its elected and appointed officials, employees, agents, boards, consultants, assigns, volunteers and successors in interest.
- (m) “Grantee” means a party to which a franchise under this Ordinance is granted by the City Commission, or its successors and assigns.
- (n) “Gross Revenue” means any and all compensation collected from Grantee’s Subscribers within Pikeville that is derived by the Grantee from the provision of Cable Service through Grantee’s Cable System within Pikeville. Gross Revenues include, but are not limited to, revenues from Subscriber rates for pay television, premium channels, video programming service tiers, advertising on video programming channels, Cable Service installations, Cable Service rebates, or commissions received from travel or home shopping services programming channels, commercial leased access of Cable Service channels, and all other Cable Services. Also, unless prohibited or preempted by either federal or state law, Gross Revenues shall mean any, and all, compensation collected from all ancillary Cable Services, including, but not limited to, advertising stuffers inserted into periodic billing statements or other notices. However, Gross Revenues does not mean any taxes or fees imposed and/or assessed by law or regulation on Subscribers (including state sales taxes) which a franchised cable operator is obligated to collect and pay in full to the applicable governmental authorities. Gross Revenues shall also exclude uncollected bad debt.
- (o) “Headend” means the control center of a Cable System, where incoming signals are received, amplified, converted, processed, and combined into a common cable, along with any origination cablecasting, for transmission to Subscribers.
- (p) “Initial Service Area” means the area within the confines of Pikeville.

- (q) "Local Office means a customer service office within the City of Pikeville if the Grantee has more than one thousand (1,000) subscribers in the City of Pikeville. If the Grantee has one thousand (1,000) subscribers or less, the customer service office shall be located within twenty (20) miles of the city limits of the City of Pikeville.
- (r) "Monitoring" means observing a communications signal, or the absence of a signal, where the observer is neither the Subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever.
- (s) "Normal Business Hours" means those hours during which most similar business in Pikeville are open to serve customers.
- (t) "Normal Operation Conditions" means those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, utility company work (including made-ready work) on poles, vehicular accidents which involve utility equipment, severing of Cable System distribution plant by third parties, labor strikes, vandalism, accidents and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance of the Cable System.
- (u) "Person" or "Party" is any person, firm, partnership, association, corporation, company, or organization of any kind.
- (v) "Road" shall mean the surface of and the space above and below any public road, street, highway, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, drive or easement now or hereafter held by the Government for the purpose of public travel and shall include other easements or rights-of-way as shall be now held or hereafter held by the Government which shall, within their proper use and meaning entitle the Government and its Grantee to the use thereof for the purposes of installing or transmitting Cable System transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a Cable System.
- (w) "Shall" is mandatory, not merely directive.
- (x) "Subscriber" means a person who is legally receiving Cable Television Service from the Grantee.
- (y) "User" means a party utilizing a Cable System channel for purposes of production or transmission of material to Subscribers, as contrasted with receipt thereof in a Subscriber capacity.

## **Section 2. FINANCIAL, CONTRACTUAL, SHAREHOLDER AND SYSTEM DISCLOSURE**

The provisions of this Section 2 shall not apply to renewal applications.

- (a) No new franchise will be granted unless all requirements of this Ordinance regarding financial, contractual, shareholder and system disclosure have been met.
- (b) Applicants, including shareholders and parties with a controlling interest in the Applicant, shall provide access to all agreements and understandings, with any person, firm, group, association or corporation with respect to the ownership of this franchise and the proposed Cable System. This section shall include, but not be limited to, any agreements between local Applicants and national companies with respect to the ownership of this franchise.
- (c) Applicants, including shareholders and parties with a controlling interest in the Applicant, shall submit all requested information as provided by the terms of this Ordinance or the application documents, which are incorporated herein by reference. The requested information must be complete and verified as true by the Applicant.
- (d) Applicants, including shareholders and parties with a controlling interest in the Applicant, shall provide, access to the numbers of shares of stock, and the holders thereof.
- (e) Applicants, including shareholders and parties with a controlling interest in the Applicant, shall disclose any information required by the application documents regarding other Cable Systems in which they hold an interest of any nature, including, but not limited to the following:
- (1) locations of all other franchises and the dates of award for each location;

- (2) estimated construction costs and estimated completion dates for each system where construction is incomplete as of the date of application;
  - (3) estimated number of miles of construction and number of miles completed in each system as of the date of this application;
  - (4) date for completion of construction as promised in the application for each system.
- (f) Applicants, including shareholders and parties with a controlling interest in the Applicant, shall disclose any information required by the application documents regarding pending applications for other Cable Systems, including but not limited to the following:
- (1) location of other franchise applications and date of application for each system;
  - (2) estimated dates of franchise awards;
  - (3) estimated number of miles of construction; and
  - (4) estimated construction costs.

Section 3. APPLICATIONS FOR NEW FRANCHISES.

The provisions of this Section 3 shall not apply to renewal applications.

- (a) All applications received by the Government from the Applicants will become the sole property of the Government.
- (b) The Government reserves the right to reject any and all applications and waive informalities, and/or technicalities where the best interest of the Government may be served.
- (c) All questions regarding the meaning or intent of the Ordinance or application documents shall be submitted to the Government in writing. Replies will be issued by Addenda mailed or delivered to all parties recorded by the Government as having received the application documents. The Government reserves the right to make extensions of time for receiving applications as it deems necessary. Questions received less than fourteen (14) days prior to the date for the opening of applications will not be answered. Only replies to questions by written Addenda will be binding. All applications must contain an acknowledgment of receipt of all Addenda.
- (d) Applications must be submitted at the time and place indicated in the application documents. Applications may be modified at any time prior to the opening of the applications, provided that any modifications must be duly executed in the manner that the Applicant's application must be executed.
- (e) Before submitting its application, each Applicant must (i) examine the Ordinance and the application documents thoroughly, (ii) familiarize itself with local conditions that may in any manner affect performance under the franchise, and (iii) familiarize itself with federal, state and local laws, Ordinances, rules and regulations affecting performance under the franchise.
- (f) The Government may make such investigations as it deems necessary to determine the ability of the Applicant to perform under the franchise, and the Applicant shall furnish to the Government all such information and data for this purpose as the Government may request. The Government reserves the right to reject any application if the evidence submitted by, or investigation of, such Applicant fails to satisfy the Government that such Applicant is properly qualified to carry out the obligations of the franchise and to complete the work contemplated therein. Conditional applications will not be accepted.
- (g) The Applicant shall prepare a technical report that describes the details of the Cable System construction plans. The technical report shall include the following details and be submitted and approved by the Government before construction:
  - A. Justification of the site selected, including:
    - listing of television stations carried on the system
    - location of microwave terminals or Headend
    - location of local origination centers

- location of antenna site
- distance from antenna site to farthest area served by the system
- height of tower
- height of antenna site in relation to average terrain
- accessibility of antenna site all year round
- local construction restrictions on tower
- power availability for antenna site
- location of antenna arrays on the tower
- direction of desired signal sources
- analysis of potential sources of interference in the nearby environment.

B. System information, including:

- statement of adherence to construction standards

drawings of the system

- description of local origination equipment
- identification of trunk and feeder cables.

- (h) No new franchise will be granted on terms more favorable in any respect, in whole or in part, than any franchise in effect under the terms of this Ordinance. The foregoing notwithstanding, if such occurs, Grantee may petition the Franchising Authority for a modification of this Franchise. Grantee shall be entitled, with respect to said more favorable terms, to such modifications of this Franchise as to insure fair and equal treatment of this Franchise and said other franchises to provide all parties equal protection under the law.

Section 4.

GRANT OF NONEXCLUSIVE AUTHORITY

- (a) Any franchise granted pursuant to this Ordinance shall confer to the Grantee the right and privilege to construct, erect, operate, and maintain in, upon, along, across, above, over, and under the roads now laid out or dedicated and all extensions thereof, and additions thereto within the territorial limits of Pikeville, poles, wires, cables, underground conduits, manholes, and other conductors, processors, equipment and fixtures necessary or useful for the maintenance and operation within the territorial limits of Pikeville of a Cable System for the origination, interception and distribution of television and radio signals and any electronic or optical signal permitted by law.
- (b) The right to use and occupy said roads for the purposes herein set forth shall not be exclusive, and the City Commission reserves the right to grant a similar use of said roads to any party at any time during the period of the franchise.
- (c) Upon the annexation or change of any territory to Pikeville, the right and franchise hereby granted shall extend to the territory so annexed to the extent the Government has authority and all facilities owned, maintained or operated by the Grantee located within, under and over streets and roads of the territory shall hereafter be subject to all terms hereof. The Government shall provide written notice of any territorial annexation or change at least ninety (90) days in advance of such annexation or change.
- (d) Nothing in this Ordinance shall (i) abrogate the right of Grantee to perform any public works or public improvements of any description; (ii) be construed as a waiver of any codes or Ordinances of the Government or of the Government's right to require Grantee or any person utilizing the Cable System to secure the appropriate permits or authorizations for such use, or (iii) be construed as a waiver or release of the rights of the Government in and to the rights-of-way.

Section 5. DURATION AND ACCEPTANCE OF FRANCHISE

The franchise and the rights, privileges and authority hereby granted shall take effect and be in force from and after final passage thereof, as provided by law, and shall continue in force and effect for a term of ten (10) years, provided that within thirty (30) days after the date of the passage of the franchise the Grantee shall file with the Clerk of Pikeville its unconditional acceptance of the franchise and promise to comply with and abide by all its provisions, terms and conditions. Such acceptance and promise shall be in writing duly executed and sworn to by, or on behalf of the Grantee, before a notary public or other office authorized by law to administer oaths. Upon the effectiveness of this franchise, the pre-existing franchise shall terminate.

Section 6. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

- (a) The Grantee shall, at all times during the life of the franchise, be subject to all lawful exercise of the police power by the Government and to such reasonable regulation as the Government shall hereafter provide.
- (b) If federal regulations alter the required services, fees, costs, conditions or standards upon which the Cable System is to operate, the Government shall have the right to amend this Ordinance to make it consistent with the modified federal laws. Any such amendment shall be limited to the specific change in federal law.
- (c) The Mayor of Pikeville, with the approval of the City Commission, may designate the appropriate Departments, Divisions, Offices, Boards or Commissions to act on behalf of the Government to carry out the duties, responsibilities or functions of the Government in the regulation of the franchise and the enforcement of this Ordinance.

Section 7. LIABILITY AND INSURANCE

(a) General

The Liability and Insurance provisions of this franchise define the responsibilities of the Grantee to the Government. As used in these Liability and Insurance provisions, the term "Government" shall be defined as follows: "Government" means Pikeville and its elected and appointed officials, employees, agents, boards, consultants, assigns, volunteers and successors in interest.

(b) Indemnity

Grantee agrees to indemnify, hold harmless, and defend the Government from any and all losses or claims of whatever kind that arise from or are alleged to have arisen, directly or indirectly, in whole or in part from the execution, performance or breach of this franchise by Grantee, its employees, agents, servants, owners, principals, lessees, contractors and subcontractors, excluding negligence and misconduct on the part of the Government. This indemnity agreement shall in no way be limited by any financial responsibility, insurance, or loss control requirements below and shall survive forever.

For purposes of this Indemnity provision:

- (1) The word "defend" includes, but is not limited to, investigating, handling, responding to, resisting, providing a defense for, and defending claims, at Grantee's expense, using an attorney approved in writing by the Government, which approval shall not be unreasonably withheld.
- (2) The word "claims" includes, but is not limited to, claims, demands, liens, suits, notices of violation from governmental agencies and other causes of action of whatever kind.
- (3) The word "losses" includes, but is not limited to: attorneys' fees and expenses; costs of litigation; court or administrative agency costs; judgments; fines; penalties; interest, all environmental cleanup and redemption costs of whatever kind; and any liability arising from death, injury or damage of any kind to any person, including employees and agents of Grantee, its servants, owners, principals, licensees, vendees, lessees, contractors and subcontractors or the Government, and damage to or destruction of any property, including the property of the Government.

(c) Insurance Requirements

Grantee shall procure and maintain for the duration of the franchise the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance hereunder by the Grantee:

- (1) Commercial General Liability Insurance with:
  - A. Limits of not less than \$1,000,000.00.
  - B. Products-Completed Operations coverage.
  - C. Personal and Advertising Injury coverage.
  - D. Explosion, collapse & underground coverage

Additionally, such insurance shall contain:

- E. Grantee's certificate of insurance will list as additional insureds, "Pikeville, its elected and appointed officials, employees, and, to the extent they have an insurable interest, its agents, boards, consultants, assigns, volunteers and successors in interest."
  - F. Grantee's insurance coverage shall be primary insurance with respect to the Government. Any insurance or self-insurance maintained by the Government shall be in excess of the Grantee's insurance and shall not contribute to it.
  - G. Grantee agrees coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice to the Government.
- (2) Comprehensive Automobile Liability Insurance providing limits of not less than \$1,000,000.00.
  - (3) Workers' Compensation Insurance as required by the Kentucky Revised Statutes.
  - (4) The Grantee shall abide by all local, state, and federal insurance regulations.

(d) Acceptability of Insurers

Insurance is to be placed with insurers qualified to do business in the Commonwealth of Kentucky.

(e) Evidence of Insurance

Prior to written acceptance of this Ordinance as required by Section 5, the Government is to be furnished Certificates of Insurance reflecting the above coverages, and Grantee agrees to provide the Government, the following:

- (1) Signed renewal Certificates for expiring policies; and
- (2) New Certificates of Insurance if policies or carriers change during terms of this franchise, showing compliance with the above Insurance requirements.

(f) Safety and Loss Control

Grantee agrees to adhere to and comply with all Federal, State and Local safety and environmental laws, regulations and Ordinances. The Grantee shall provide all safeguards, safety devices and protective equipment necessary to protect the life, health, safety and property of all persons on the job site, the public and the owner as required by applicable Federal, State and local law.

Definition of Default

Grantee understands and agrees that the failure to comply with any of these insurance, safety or loss control provisions within ten business (10) day after notice from the Government that the Grantee is not in compliance shall constitute a default under this Ordinance. The Government may elect, at its option, any single remedy or any combination of remedies, as available, including but not limited to, purchasing insurance and charging Grantee for any such insurance premiums purchased, or terminating the Grantee's franchise.

Section 8. LETTER OF CREDIT OR PERFORMANCE BOND

- (a) Within thirty (30) days after the grant and acceptance of this franchise, the Grantee shall arrange for, and shall deposit with the Government, a letter of credit from a financial institution or a performance bond in the amount of fifteen thousand dollars (\$15,000.00). The letter of credit or performance bond shall be used to insure the faithful performance by the Grantee of all of the provisions in this Ordinance; and compliance with all orders, permits and directions of any agency, commission, board, department, division or office of the Government having jurisdiction over its acts or defaults under this Ordinance and the

payment by the Grantee of any claims, liquidated damages, liens and/or taxes due the Government which may arise by reason of the construction, operation or maintenance of the System.

- (b) The letter of credit or performance bond shall be maintained at fifteen thousand dollars (\$15,000.00) during the entire term of the franchise, even if amounts are withdrawn pursuant to subsections (a) or (c) of this section.
- (c) If the Grantee fails, after receipt of ten (10) days written notice, to pay to the Government any claims, liquidated damages, liens and/or taxes due the Government, or fails to repay the Government, with such ten (10) days, any damages, costs or expenses which the Government is compelled to pay by reason of any act or default of the Grantee in connection with the Grantee's franchise; or fails, after three (3) days written notice of such failures by the Grantee to comply with any provision of this Ordinance which the Government reasonably determines can be remedied by demand on the letter of credit or performance bond, the Government may immediately request payment of the amount thereof, with interest and any liquidated damages, from the letter of credit or performance bond. Upon such request for payment, the Government shall notify the Grantee of the amount and date thereof.
- (d) The rights reserved to the Government with respect to the letter of credit or performance bond are in addition to all other rights of the Government, whether reserved by this franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit or performance bond shall affect any other right the Government may have.
- (e) The letter of credit or performance bond shall contain the following endorsement:

"It is hereby understood and agreed that this letter of credit (or performance bond) may not be canceled or not renewed by the surety nor the intention to cancel or not to renew be stated by the surety until thirty (30) days after written notice to the Government of surety's intention to cancel or not to renew."

#### Section 9. PAYMENT TO THE GOVERNMENT

- (a) Payments shall be made at the times and in conformance with the requirements of Kentucky Revised Statutes, Chapter 136, as revised by House Bill 272 (Tax Modernization) in the 2005 Regular Session of the Kentucky General Assembly (the "Kentucky Franchise Law"). Additionally, the City may at any time impose any fees or taxes consistent with state or federal law, including, but not limited to property taxes, and occupational license fees but excluding and never including franchise fees except to the extent allowed by subsection (c), below.
- (b) The excise tax distribution from the state is not a payment in lieu of any tax, fee or other assessment except as specifically provided in this Ordinance, or as required by applicable law. By way of example, and not limitation, permit fees and business license taxes are not waived and remain applicable. Such payments shall be made at the times and in conformance with the requirements of the Cable Ordinance.
- (c) Government may not collect franchise fees from Grantee except to the extent allowed by this subsection (c). If at any time Kentucky law is changed to allow the collection of franchise fees by the Grantee, (i) Grantee may collect said franchise fees for the reason that the Roads to be used by the Grantee in the operation of its system within the boundaries of Pikeville are valuable public properties, acquired and maintained by the Government at great expense to its taxpayers, and that the grant to the Grantee to use said Roads is a valuable property right without which the company would be required to invest substantial capital in right-of-way costs and acquisitions, and (ii) the franchise fee shall be in an amount equal to the lesser of (X) five percent (5%) of Grantee's Gross Revenue from all sources attributable to the operations of the Grantee within the territorial limits of Pikeville and (Y) the positive amount (if any) determined in accordance with (X) as remains after deducting franchise fees paid by Grantee under the Kentucky Franchise Law.
- (d) Subject to Section 622 of the Communications Act and the Kentucky Franchise Law, the payment of the franchise fee shall be in addition to any other tax or payment owed to the Government by Grantee.
- (e) If any franchise fee is owed to the Government under subsection (c), above, it shall be payable quarterly to the Government and the Grantee shall file a complete and accurate report, signed by and certified as accurate by an officer of the Grantee, of all Gross Revenues received within the territorial limits of Pikeville during the previous three month period, and said payment shall be made to the Government no later than thirty (30) days after the expiration of the quarter when due. The Gross Revenue report from operations

of the Grantee within the franchise area shall include: a schedule of Gross Revenue by category by month; a schedule of the number of Subscribers by category of service by month; and a schedule of Gross Revenue upon which the franchise fee is based.

(f) If any franchise fee is owed to the Government under subsection (c), above, upon reasonable notice, the Government shall have the right during Normal Business Hours to inspect the Grantee's income records at the Grantee's Local Office, the right to audit and to re-compute any amounts determined to be payable under this Ordinance; provided, however, that such audit shall take place within twelve (12) months following the close of each of the Grantee's fiscal years. If, as a result of such audit or review, the Government determines that Grantee has underpaid its fees to the Government in any twelve (12) month period by ten percent (10%) or more, then, in addition to making full payment of the relevant obligation, Grantee shall reimburse the Government for all of the reasonable costs associated with the audit or review, including costs for attorneys, accountants and other consultants. Any additional amount due to the Government as a result of an audit or review shall be paid within the thirty (30) days following written notice to the Grantee by the Government, which notice shall include a copy of the audit report and copies of all invoices for which the Government seeks reimbursement.

(g) In the event that any franchise payment or recomputed amount is not made to the Government on or before the applicable dates heretofore specified, interest shall be charged from such date at the annual rate of 2% over prime interest rate.

(h) The Government reserves the right to require the Grantee to collect any consumer or other tax or other fee that may be lawfully imposed by the Government, the Commonwealth of Kentucky, or the federal government on Cable Services.

(i) No acceptance of any payment by the Government shall be construed as an accord and satisfaction that the amount paid is in fact the release of any claim that the Government may have for further or additional sums payable under this Ordinance.

#### Section 10. LIQUIDATED DAMAGES

(a) For violation of any of the following provisions of this Ordinance, liquidated damages may be recoverable from the letter of credit or performance bond as follows:

- (1) For failure to complete construction and installation of the system or complete line extensions in accordance with this Ordinance and the Grantee's application as incorporated herein, unless the City Commission specifically approves the delay by resolution or because of reasons beyond the control of the Grantee, Grantee shall forfeit five hundred dollars (\$500.00) per day or part thereof that the violation continues.
- (2) For failure to comply with Section 22, Grantee shall forfeit two hundred dollars (\$200.00) per day or part thereof that the violation continues.
- (3) For failure to comply with any other provisions of this Ordinance, Grantee shall forfeit one hundred dollars (\$100.00) per day or part thereof that the violation continues.

(b) Before the Government may assess any liquated damages under this section and before any sums are withdrawn from the letter of credit or performance bond, the Government shall give the Grantee written notice and an opportunity to be heard in accordance with the following procedure:

- (1) The Government shall notify the Grantee, in writing, of an alleged failure to comply with the provisions of this Ordinance as outlined in Section 10(a), which notice shall specify the alleged failure.
- (2) The Grantee shall, within fifteen (15) days after receipt of the notice, either cure the alleged failure or, in a written response to the City Commission, either present facts and arguments in refutation or excuse of such alleged failure or state that the alleged failure will be cured and set forth the method and time schedule for accomplishing such cure.
- (3) If the Grantee fails to cure and/or fails to notify the Government as provided in the preceding paragraph within fifteen days, the City Commission shall hold a public hearing to determine whether or not any violation has occurred. Notice of such public hearing shall be sent out not less than seven (7) nor more than twenty-one (21) days before the public hearing

- (4) Following the public hearing and a majority vote of the City Commission finding that a failure to comply with a provision of the franchise has occurred, the City Commission may issue a written decision ordering liquidated damages in accordance with this section.
- (c) Except as provided in federal law, Grantee shall not be excused from complying with any of the terms and conditions of this Ordinance by any failure of the Government, upon any one or more occasions, to insist upon the Grantee's performance or to seek Grantee's compliance with any one or more of such terms or conditions. Payment of liquidated damages shall not excuse nonperformance under this Ordinance.

Section 11. CONDITIONS OF ROAD OCCUPANCY

- (a) The Grantee acquiring this franchise shall have the right and privilege of constructing, erecting, operating and maintaining a Cable System, equipment and apparatus, upon, through, along, under and over the Roads within the territorial limits of Pikeville; subject to the provisions hereof and to all powers (including police power) inherent in, conferred upon or reserved to said Government.
- (b) (1) No pavements, sidewalks, curbs, gutters, or other such road installations shall be disturbed and no excavation in any of the said Roads will be made, except with the written permission of the Government and all equipment and apparatus shall be located in such portion of said Roads as may be designated by the Government.
- (2) When an emergency arises which requires immediate repair, the Grantee may disturb or excavate a Road without first obtaining written permission from the Government, provided that the Government is notified in writing of said repair within five (5) days. This notification shall include at least the time, date, location and extent of excavation or other work performed.
- (3) When the Grantee enters upon any Road for the purpose of constructing, erecting, operating, maintaining and/or removing equipment and apparatus, it shall prosecute the work, at its own cost and expense, with due diligence and shall dig and close up all trenches and exposed places as rapidly as possible, and shall leave the Roads in the same condition as when it entered the same for said purpose or purposes. All such repairs shall be maintained by the company for one (1) year in as good condition as the remainder of said Road. In the event the Grantee fails, refuses or neglects to comply with the above provisions, the Government shall have the right, notwithstanding any other provision of this Ordinance, after notice in writing having first been given to the Grantee, or any officer or agent representing it, to do said work or make said repairs, and the cost and expense thereof shall be paid to the Government by the Grantee within ten (10) days from the date on which an itemized bill is presented to the Grantee.
- (4) In the construction or reconstruction or maintenance or removal of any of said equipment and apparatus, the Grantee shall have due regard for the rights of the Government and others, and shall not interfere with, or in any way injure the property of the Government or others, under, on, or above the ground. Said Grantee shall comply with all the laws of the Commonwealth of Kentucky and Ordinances of the Government as to placing lights, barricades, flags, danger signals or warning signs and shall be liable for any and all damage that may arise by reason of Grantee's failure or neglect to comply with such Ordinances and laws. Work by the Grantee hereunder shall be done in a workmanlike manner and so as not to unnecessarily interfere with public use of any of said Roads.
- (c) (1) Whenever the Government or any of its departments, agencies and/or agents, servants or employees shall grade, regrade, construct, reconstruct, widen or alter any Road or shall construct, reconstruct, repair, maintain or alter any other municipal public works (including but not limited to storm sewers, sanitary sewers and street lights) therein, it shall be the duty of the Grantee, after receiving thirty (30) days notice by the Government, to change, remove, relay and relocate its equipment and apparatus, poles, wires, cables, conduits and other fixtures, in the Road at its own expense so as to conform to the established grade or line of such Road and so as not to interfere with such municipal public works so constructed, reconstructed or altered.
- (2) The Grantee shall be given access to all Road plans and specifications in possession of the Government.
- (d) The Grantee shall, at the request of any Person holding a moving permit issued by the Government, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by

the Person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than ten (10) business days advance notice to arrange for such temporary wire changes.

- (e) The Grantee shall have the authority to trim trees upon and overhanging public Roads so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee. Any trimming, removal or other disturbance of trees shall conform to all Ordinances, requirements and directives of the Government.
- (f) In all areas within the territorial limits of Pikeville, where the cables, wires, and other like facilities of public utilities are placed underground, the Grantee shall place its cables, wires, or other like facilities underground to the maximum extent that existing technology reasonably permits the Grantee to do so.
- (g) In addition to the provisions contained in this section, Grantee shall comply with all local Ordinances pertaining to Road occupancy.

#### Section 12. ERECTION, REMOVAL AND COMMON USES OF POLES

- (a) No poles or other wireholding structures shall be erected by the Grantee without prior approval of the Government with regard to need, location, height, type, and any other pertinent aspect. However, no location of any pole or wireholding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the Government determines that the public health, welfare and/or safety would be enhanced thereby.
- (b) If Grantee locates its distribution facilities where poles or other wireholding structures already existing for use in serving Pikeville are available for use by the Grantee, but it does not make arrangements for such use, the Government may require the Grantee to use such poles and structures if it determines that the public health, welfare and/or safety would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.
- (c) Where the Government or a public utility serving the Government desires to make use of the poles or other wireholding structures of the Grantee, but agreement thereof with the Grantee cannot be reached, the City Commission may require the Grantee to permit such use for reasonable and proper consideration consistent with applicable law, if the City Commission determines that the use would enhance the public health, welfare and/or safety and would not unduly interfere with Grantee's operations.
- (d) As further consideration for the granting of the franchise, the Grantee shall permit the Government, at no charge, to utilize Grantee conduit duct and/or dark fiber space within the City limits when such space is vacant, available, and not reserved for future use at the time of the request for space by the Government; provided, however, that the facilities of the Government which use Grantee's conduit duct or raceway space shall not, in the Grantee's sole discretion, interfere with the Grantee's technical operations and/or performance or compete directly with the services provided by the Grantee. This space shall only be used for police and fire alarm systems, traffic control and traffic signal interconnection systems, municipal data processing, interconnection systems, and other municipal purposes. The Government shall be responsible for all "make-ready" work charged by the owner/administrator of the conduit and/or raceway space which is necessary for such utilization by the Government and shall reimburse Grantee for any expenses incurred by the Grantee in connection therewith.

#### Section 13. CONSTRUCTION STANDARDS AND SPECIFICATIONS

- (a) Within thirty (30) days of the commencement of any upgrade or rebuild construction, Grantee shall furnish to the Government a map indicating the sequence of the construction schedule.
- (b) Where the signal of a music channel or a service provided on a per-channel or pay per view basis originates in stereo, the Grantee shall provide stereo retransmission of those signals.

- (c) The Grantee shall at all times comply with the following codes and standards to the extent that such codes and standards are consistent with local law: (i) National Electrical Code (published by National Bureau of Fire Underwriters); (ii) Standards of Good Engineering Practices for Cable Measurements on Cable Televisions Systems (published by National Cable Television Association); (iii) standards of the Occupational Safety and Health Administration; and (iv) Standards for Steel Antenna Towers and Antenna Supporting Structures (published by the Engineering Department of the Electronic Industry Associations). To the extent that such codes and standards are inconsistent with other provisions of this franchise or with local law, the latter will govern.
- (d) All new construction and new installation shall comply with the National Electrical Safety Code (published by the National Bureau of Standards).
- (e) Installation and physical dimensions of any tower constructed for use in the Cable System shall comply with all appropriate Federal Aviation Agency regulations.
- (f) Any antenna structure in the Cable System shall comply with Construction, Marketing and Lighting of Antenna Structures, 47 C.F.R. § 17.1 et. seq.
- (g) The Grantee shall at all times use ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
- (h) The Grantee shall construct and operate the system and related facilities in accordance with all generally accepted related industry codes and standards that are applicable.

#### Section 14. LINE EXTENSIONS

- (a) The Grantee shall be required to extend its system pursuant to the following requirements:
- (1) Upon request by an unserved potential subscriber, Grantee must extend and make Cable Television Service available to his or her unserved dwelling unit, including individual apartment units, that both is not passed by a Cable System as of the date of enactment of this Ordinance and is within one hundred and fifty (150) feet of Grantee's Cable System trunks as of the date of enactment of this Ordinance, within one hundred twenty (120) days of that date, but shall not be required to make Cable Television Service available to any unserved area reaching less than an average minimum density of eighteen (18) dwelling units, including individual apartment units, per road mile, as measured from the existing system. If at any time after the expiration of the initial one hundred twenty (120) day period, the Government notifies the Grantee that there are unserved dwelling units, including individual apartment units, which meet the foregoing minimum density, system passing and proximity requirements, the Grantee must extend and make Cable Television Service available to those dwelling units after notification from the Government, unless Grantee applies for and is granted a waiver of this requirement from the Government.
  - (2) Grantee shall only be required to extend and make Cable Service available to apartments if consent can reasonably be obtained from the building's owner.
  - (3) Grantee must extend and make Cable Television Service available to any unserved resident within the Initial Service Area requesting connection at the standard connection charge, if the connection to the unserved resident would require no more than a standard one hundred and fifty (150) foot aerial drop line, if the requirements for extension under Section 14(a)(1) are otherwise met. With respect to requests for connection requiring an aerial drop line in excess of one hundred fifty (150) feet, Grantee must extend and make available Cable Service to such residents, if the requirements for extension under Section 14(a)(1) are otherwise met, at a connection charge not to exceed that permitted by applicable law.
    - (A) Upon written request, each initial Subscriber(s) who paid for such line extension shall be reimbursed as follows: for a period of three (3) years after construction of the extension, each additional Subscriber whose service line is directly connected to the extension installed shall be required to contribute to the cost of the extension based on the re-computation of both the Grantee's portion of the total cost and the amount contributed by the Subscribers. The Grantee shall refund to those Subscribers that have previously contributed to the cost of the extension that amount necessary to reduce their contribution to the currently calculated amount for each

Subscriber to the extension. All Subscribers directly connected to the extension for a three (3) year period after it is placed in service shall contribute equally to the cost of the extension.

Section 15. EDUCATIONAL AND GOVERNMENTAL CHANNEL

(a) Grantee shall, at no charge to the City, make available within one hundred and fifty (150) days of receipt of written notice from the City, forty (40) hours of access to one (1) Educational and Governmental access channel (the "EG Channel"). Grantee shall allow the City to air forty (40) hours of non commercial programming a week. The City, or its designee, shall have sole responsibility for the format and content of the programming the City or its designee inserts on the EG Channel. Such access shall be used by the City or its designee solely for non-commercial programming for the Pikeville School System and Pikeville College.

Section 16. EMERGENCY ALERT OVERRIDE AND CHANNEL

(a) The Grantee shall incorporate into its cable television system, the capability which will permit the Mayor (or his/her designee) in times of emergency, to override, by remote control, the audio of all channels simultaneously.

(b) The availability of this service is provided for the benefit of the community and neither the Government nor the Grantee nor any of their agents, employees, or officers shall be liable in any manner for failure to use or for misuse of the override system. To the extent that federal law or regulations provide standards for the provision or use of emergency override services, such law or regulations shall supersede the requirements of this section.

(c) The Grantee shall cooperate with the Government in the use and operation of the emergency alert override system.

Section 17. ANTENNAS AND ANTENNA SWITCHES

The Grantee shall not, as a condition to providing Cable Television Service, require any Subscriber, or potential Subscriber, to remove any existing antenna for the receipt of over-the-air television signals.

Section 18. STANDBY POWER

The Grantee shall install and maintain equipment capable of providing two (2) hours standby power for the Headends.

Section 19. PROOF OF PERFORMANCE TESTING

(a) Tests and measurements to ensure compliance with technical standards shall be performed in a manner that is consistent with the provisions of 47 C.F.R. 76.609, et seq., and as amended from time to time.

(b) (1) When there have been similar complaints made, or where there exists other evidence, which, in the judgment of the Government, casts doubt on the reliability of quality of cable service, the Government shall have the right and authority to compel the Grantee to produce copies of the reports of testing performed to comply with Section 20(a) above with respect to the performance of the Cable System of the Grantee or to test, analyze and report on the performance of the system. Such test or tests shall be made, and the reports of such test or tests shall be delivered to the Government no later than fourteen (14) days after the Government formally notifies the Grantee in writing that such tests or reports are required.

(2) The Government's right under this provision shall include, but not be limited to, requiring tests, analyses, and reports covering specific subjects and characteristics based on complaints or other evidence when and under such circumstances as the Government has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against substandard Cable Service.

- (3) Said tests and analyses shall be supervised by a mutually agreed upon qualified person, with all costs to be borne by the Grantee only if the testing indicates that the Cable System is not in compliance with a material provision of this Ordinance, the Communications Act and/or FCC rules and/or regulations. The aforesaid person shall sign all records of special tests and forward to the Government such records with a report interpreting the results of the tests and recommending actions to be taken by the Government.

#### Section 20. PROOF OF PERFORMANCE RECORDS

The results of all tests and measurements required to be taken by the Grantee in Section 19 of this Ordinance shall be delivered to the Government within thirty (30) days after such tests or measurements are performed.

#### Section 21. PERFORMANCE EVALUATION SESSIONS

- (a) The Government may hold performance evaluation sessions not more than twice annually after providing written notice to Grantee no less than thirty (30) days prior to such evaluation sessions. All such evaluation sessions shall be open to the public.
- (b) Special Evaluation Sessions. Special evaluation sessions may be held at any time during the term of the franchise at the request of the Government or the Grantee, provided there is evidence of pressing cable-related needs or issues relating to Grantee's performance under this Ordinance.
- (c) All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with legal notice. The publication expense shall be borne by the party requesting the session or divided equally if the session is held by mutual agreement. Grantee shall notify its Subscribers of all evaluation sessions by announcement on at least one (1) channel of its Cable System between the hours of 7:00 and 9:00 PM, for five (5) consecutive days preceding each session.
- (d) Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to: application of new technologies; system performance; customer complaints; privacy; amendments to this Ordinance; and judicial and FCC rulings.
- (e) Members of the general public may add topics either by working through the negotiating parties or by presenting a petition. If such a petition bears the valid signatures of fifty (50) or more Subscribers of the Grantee in the City, the proposed topic or topics shall be added to the list of topics to be discussed at the evaluation session.
- (f) Grantee may provide additional types of service, upon a mutually agreeable determination by the Government and Grantee at a performance evaluation session, that it is economically viable and technologically and operationally feasible for the Grantee to provide such services.

#### Section 22. OPERATIONAL STANDARDS

- (a) The Grantee shall put, keep, and maintain all parts of the system in good condition throughout the entire franchise period.
- (b) Upon the request for service by any person located within Pikeville, the company shall furnish the requested service to such person within terms of the line extension policy in Section 14 of this Ordinance.
- (c) The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use.
- (d) Grantee shall not allow its cable or other operations to interfere with television reception of persons not served by Grantee, nor shall the system interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents within the confines of Pikeville.

- (e) The Grantee shall continue, through the term of the franchise, to maintain the technical standards and quality of service set forth in this Ordinance.
- (f) The Grantee shall maintain the following broad categories of video programming: (1) television broadcast signals; (2) educational television broadcast signals; (3) noncommercial programming; (4) commercial and non-commercial local community programming (if available); (5) sports programming; (6) news and public affairs programming; (7) general entertainment programming; (8) weather programming; (9) music video programming (e.g. MTV, VH1, CMT) ; and (10) family programming.
- (g) Prior to the initial grant or renewal of a franchise hereunder, the Grantee shall submit to the Government a schedule of the video and audio programming that is proposed to be offered on the Cable System and the channel assignment for each. Thereafter, Grantee may not add, substitute or delete any programming or change or reposition any channels without first affording the Government at least thirty (30) days notice.

#### Section 23. CONSUMER SERVICE STANDARDS

- (a) Office Hours and Telephone Availability.
  - (1) The Grantee will maintain a Local Office at which Subscribers may pay bills, report service or billing problems, request service or exchange equipment, and which shall be open during Normal Business Hours and be conveniently located.
  - (2) The Grantee will provide a local and/or a toll-free telephone access line which will be available to its Subscribers twenty four (24) hours a day, seven (7) days a week.
    - (i) Trained representatives of the Grantee will be available to respond to customer telephone inquires during Normal Business Hours. Each such employee shall be trained to perform efficiently the various tasks, including responding to consumer inquires and complaints, necessary to provide consumer services in a responsible and courteous manner.
    - (ii) After Normal Business Hours, the telephone access line may be answered by a service or an automated response system, including an answering machine. Inquires received after Normal Business Hours must be responded to by a trained representative of the Grantee within one (1) business day after receipt of the complaint.
  - (3) Under Normal Operation Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under Normal Operation Conditions.
  - (2) Under Normal Operation Conditions, the customer will receive a busy signal less than three percent (3%) of the time.
  - (3) The Grantee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless a historical record of complaints indicates a clear failure to comply.
- (b) Installation Outages and Service Calls: Each of the following standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:
  - (1) Installations within 150 feet of the existing distribution system will be performed within seven (7) business days after an order has been placed unless scheduled at a later time by customer request.
  - (2) Grantee will begin working on "service interruptions" promptly and in no event later than twenty four (24) hours after the interruption becomes known.
  - (3) When a Subscriber requests a change in the type of Cable Service he/she is currently receiving, the Grantee must begin action to change the type of service provided the next business day after notification. If the desired change is not made within seven (7) days of notification, and the change would decrease the Subscriber's bill, the Grantee shall credit the Subscriber's bill despite the fact that the service has not been changed.

- (4) The “appointment window” alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (The Grantee may schedule service calls and other installation activities outside of Normal Business Hours for the expressed convenience of the customer.)
  - (5) The Grantee may not cancel an appointment with a customer after close of business on the business day prior to the scheduled appointment.
  - (6) If a representative of the Grantee is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.
- (c) Communications Between Grantee and Cable Subscribers
- (1) Notification to Subscribers
    - (i) The Grantee shall provide written information on each of the following areas at the time of installation of service, and at any time upon reasonable request:
      - (A) Products and services offered;
      - (B) Prices and options for programming services and conditions of subscription to programming and other services;
      - (C) Installation and service maintenance policies;
      - (D) Instructions on how to use the Cable Service;
      - (E) Channel positions of programming carried on the system;
      - (F) Billing and complaint procedures, including the address and telephone number of the Government;
      - (G) A description of Grantee’s policies concerning credits for outages and reception problems, consistent with these consumer protection standards; and
      - (H) The toll-free numbers for Grantee’s Subscriber service telephone system.
    - (ii) Customers will be notified of any change in rates, programming services or channel positions as soon as possible through announcements on the Cable System or in writing using any reasonable means at the Grantee’s sole discretion. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Grantee. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in other information required by the preceding paragraph.
  - (2) Billing--
    - (i) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
    - (ii) In cases of a billing dispute, the Grantee must respond to a written complaint from a Subscriber within thirty (30) days.
  - (3) Refunds – No refund checks shall be required to be issued for amounts less than one dollar. Refund checks will be issued promptly, but no later than either:
    - (i) The customer’s next billing cycle following resolution of the request or thirty (30) days, whichever is earlier; or
    - (ii) The return of the equipment supplied by the Grantee if service is terminated.
  - (4) Credits-
    - (i) Credits for service will be issued no later than the customer’s second billing cycle following the determination that a credit is warranted.

(ii) When the use of service or equipment furnished by the Grantee is interrupted due to any cause other than the negligence or willful act of the Subscriber or the failure of equipment provided by the Subscriber, a pro rata adjustment of the fixed monthly charges involved will be allowed, upon the request of the Subscriber, for the service and equipment rendered useless and inoperative by reason of the interruption during the time said interruption continues in excess of six (6) hours from the time it is reported to or detected by the Grantee. For purpose of this section, every month is considered to have thirty (30) days.

#### Section 24. COMPLAINT PROCEDURE

- (a) Government Official Responsible. The Cable Communications Officer is designated by the Government as having primary responsibility for the continuing administration of the franchise and implementation of complaint procedures.
- (b) Complaint Response. The Grantee shall maintain a repair and maintenance crew capable of responding to Subscriber complaints within twenty-four (24) hours after receipt of the complaint. Charges may be made, as permitted by applicable law, to the Subscriber for this service if the service call is not a result of a Cable System malfunction.
- (c) Subscriber Notice of Complaint Procedures. The Grantee shall establish procedures for receiving, acting upon, and resolving Subscriber technical, customer service, Cable Service, and billing complaints. The Grantee shall furnish a notice of such procedures to each Subscriber at the time of initial subscription to the system.
- (d) Complaint Records. The Grantee shall maintain a written record or "log", listing date and time of written customer technical, customer service, Cable Service, and billing complaints, describing the nature of the technical, customer service, Cable Service, and billing complaints and when and what action was taken by the Grantee in response thereto; such record shall be kept at Grantee's local or regional office, reflecting the operations to date for a period of at least three (3) years, and shall be available for inspection by the Government during Normal Business Hours.
- (e) Repetition of Similar Complaints: When there have been similar complaints made, which, in the judgment of the Government cast doubt on the reliability or quality of Cable Service, the government shall have the right and authority to compel the Grantee to test, analyze and report on the performance of the system pursuant to the special testing procedures enumerated in Section 19 of this Ordinance.

#### Section 25. REFUNDS TO SUBSCRIBERS AND USERS

- (a) If the Grantee fails to provide service to a Subscriber, the Grantee shall, after being afforded a reasonable opportunity to provide the service, refund all deposits or advance charges paid for the service in question by said Subscriber. This provision does not alter the Grantee's responsibility to Subscribers under any separate contractual agreements the Grantee might have with Subscribers or relieve the Grantee of liability for fines under this Ordinance that may be assessed by the Government or damage that might result to the Government or any Subscriber because of the Grantee's failure to provide a service as promised.
- (b) If any Subscriber terminates, for personal reasons, any monthly service prior to the end of a prepaid period, a pro-rata portion of any prepaid Subscriber service fee, using the number of days as a basis, shall be refunded to the Subscriber by the Grantee, in accordance with Section 24(c)(3).

#### Section 26. DISCONNECTION

- (a) If a Subscriber has failed to pay properly due monthly fees or if a Subscriber disconnects for seasonal periods, the Grantee may require, in addition to full payment of any delinquent fees, a reasonable fee for reinstatement.
- (b) No disconnection shall occur for at least fifty (50) days after the due date of said monthly fee or charge. The fifty (50) day period shall include five (5) days written notice to the delinquent Subscriber of the intent to disconnect.
- (c) After disconnection, upon payment in full of the delinquent fee or charge and the payment of a reconnection charge, the Grantee shall promptly reinstate the Subscriber's Cable Service.

Section 27. PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED: BILLING PRACTICES

The Grantee shall not, as to rates, charges, service, services facilities, rules, regulations, or in any other respect, make or grant any undue preference or advantage to any party, nor subject any party to any prejudice or disadvantage; provided, however, that this section shall not prohibit promotional activities of the Grantee or the provision of free service to employees of Grantee.

Section 28. TRANSFER OF CONTROL

- (a) All of the rights and privileges and all of the obligations, duties and liabilities created by this Franchise shall pass to and be binding upon the successors of the Government and the successors and assigns of Grantee; and the same shall not be assigned or transferred without the written approval of the City Commission, which approval shall not be unreasonably withheld; provided, however, that this Section shall not prevent the assignment or hypothecation of the Franchise by Grantee as security for debt without such approval; and provided further that transfers or assignments of this Franchise between any parent and subsidiary corporation or between entities of which at least fifty percent (50%) of the beneficial ownership is held by the same person, persons, or entities which are controlled or managed by the same person, persons, or entities, shall be permitted without the prior approval of the Government ("intracompany transfers"). Grantee shall notify the Government in writing within 30 days of the closing of such intracompany transfer. The City Commission shall have one hundred twenty (120) days within which to approve or disapprove a transfer of control (except as provided herein) and if no action is taken within such one hundred twenty (120) days, approval shall be deemed to have been given unless the requesting party and the Government agree to an extension of time. In making a determination on whether to grant an application for a transfer of a franchise, the City Commission may consider the financial, technical and legal qualifications of the transferee to operate the system pursuant to federal law; whether the incumbent cable operator is in compliance with this Ordinance and, if not, the proposed transferee's commitment to cure such noncompliance.
- (b) The consent or approval of the City Commission to any assignment, lease, transfer, sublease, or mortgage of the Grantee shall not constitute a waiver or release of the rights of the Government in and to the roads.
- (c) For the purposes of this section, the term "control" is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

Section 29. FORFEITURE OF FRANCHISE

- (a) In addition to all other rights and powers pertaining to the Government by virtue of the franchise or otherwise, the Government, by and through its City Commission, reserves the right to terminate and cancel the franchise and all rights and privileges of the Grantee hereunder (after due process as set forth in Section 29(b)) in the event that the Grantee:
  - (1) Violates any material provision of the franchise or any material rule, order, or determination of the Government made pursuant to the franchise, except where such violation is without fault or through excusable neglect;
  - (2) Attempts to evade any material provision of the franchise or practices any fraud or deceit upon the Government;

- (3) (4) Knowingly makes a material misrepresentation of any application, proposal for renewal, or negotiation of the franchise; or
  - (5) Fails to restore Cable Service following ninety-six (96) or more consecutive hours of interrupted service, except when approval of such interruption is obtained from the Government. Such approval shall not be unreasonably withheld.
- (b) Forfeiture Procedure.
- (1) The Government shall give the Grantee written notice and an opportunity to be heard in accordance with the following procedure:
    - (A) The Government shall notify the Grantee in writing of an alleged failure to comply with the provisions of this Ordinance as outlined in Section 30(a), which notice shall specify the alleged failure with particularity.
    - (B) If the violation continues for a period of thirty (30) days following such written notice without written proof that corrective action has been taken or is being actively and expeditiously pursued, the Government may place its request for termination of the franchise on its City Commission meeting agenda. The Government shall give the Grantee at least 10 days written notice of said meeting and legal notice shall be published.
    - (C) The City Commission shall consider the request of the Government and shall hear the Grantee and any other person(s) interested therein, and shall determine whether or not any violation has occurred. If the City Commission determines that such failure has not occurred, or that such failure either has been or will be cured in a manner and in accordance with a schedule satisfactory to the City Commission or that the failure is excusable, such determination shall conclude the investigation.
    - (D) Following the majority vote of the City Commission finding that a failure to comply with a material provision of the franchise has occurred and that such failure is not excusable and has not been or will not be cured by the Grantee in accordance with a schedule satisfactory to the Government, the City Commission may issue a written decision ordering termination and forfeiture of the franchise and/or imposing other penalties provided for under this Ordinance.
    - (E) In the event of said revocation the Grantee shall have two years from the date on which it ceases operations to remove, at its own expense, all portions of its Cable System from all roads within the confines of Pikeville, and shall restore said roads to a condition reasonably satisfactory to the Government within such period of time.
    - (F) Grantee retains the right relating to any decision or determination under this section or any other provision herein, to appeal to any court or regulatory agency of competent jurisdiction.

Section 30. GOVERNMENT RIGHTS IN FRANCHISE

- (a) It shall be the right of all Subscribers to receive all available services insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify or sell the system, or the City Commission terminates this franchise, or the City Commission purchases the system, the Grantee shall ensure that all Subscribers receive continuous, uninterrupted service regardless of circumstances.
- (b) The right is hereby reserved to the Government to adopt, in addition to the provisions contained herein and in existing applicable Ordinances, such additional regulations as it shall find necessary in the exercise of the police power; provided that such regulation, by ordinance or otherwise, shall be reasonable and not in conflict with the rights and obligations herein granted.
- (c) Upon twenty-one (21) days written notice, the Government shall have the right to inspect during Normal Business Hours the books, records, maps, income tax returns, and other like materials of the Grantee pursuant to the operation of the Cable System within the Government's franchise area for its three last fiscal years of operation.

- (d) The Government shall have the right, during the life of the franchise, to install and maintain upon the poles of the Grantee any wire and pole fixtures necessary for a police and fire alarm system, on the conditions that such wire and pole fixtures do not unreasonably interfere with the cable television operations of the Grantee, are installed and maintained by the Government in accordance with the National Safety Code, and that the Government pay all “make ready” charges associated therewith and pay fair market value for the use of such poles.
- (e) The Government shall have the right to make such inspections it shall find necessary to ensure compliance with the terms of the franchise and other pertinent provisions of law.
- (f) At the expiration of the term for which the franchise is granted, or upon termination and cancellation of the franchise granted hereunder, as provided for herein, the Government shall have the right to require the Grantee to remove at its own expense all portions of the Cable System from all roads within the confines of Pikeville.

#### Section 31. REPORTS AND FILINGS

- (a) Copies of all petitions, applications, and communications submitted by the Grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction respect to any matters affecting cable television operations authorized pursuant to the franchise, shall be submitted to the Government upon thirty (30) days written request unless such information is confidential.
- (b) If requested by the Government in writing, Grantee shall make provide to the Government and pursuant to the specific provisions herein, within thirty (30) days of said request, or as mutually agreed upon the following :
  - (1) construction information indicating the number of homes passed and the number of cable plant miles constructed;
  - (2) information indicating, where technologically possible and economically feasible, the number of calls received, number of calls abandoned, number of calls receiving a busy signal;
  - (3) installation information indicating: the number of total standard installations performed; the number of standard installations performed within seven days; number of service interruptions responded to within 24 hours; number of other service problems reported; number of other service problems responded to within 36 hours, and all other information necessary to monitor the licensee’s compliance with the Subscriber protection standards of this Ordinance;
  - (4) a current copy of the Subscriber service agreement; a current list of all rates, charges, and available services, and a current channel list;
  - (5) a summary of the previous year’s activities in the development of the system, including, but not limited to, services begun or dropped, the previous year’s constructions activities, and a summary of any policy changes taking effect during the year;
  - (6) a copy of all Grantee’s published rules and regulations applicable to Subscribers and users of the Cable System; and a summary of the licensee’s hours of operation;
  - (7) subject to section 631 of the Communications Act, 47 U.S.C. § 551, a summary of written Subscriber or consumer complaints, identifying complaints by number and category, and their disposition; and, where complaints involve recurrent system problems, the nature of each problem and what steps have been taken to correct them;
  - (8) a copy of updated maps depicting the location of all trunks. Strand maps shall be furnished. As-built maps may be viewed at Grantee’s Local Office without copying or note-taking Proprietary maps, shall be afforded confidentiality protection by an agreement mutually acceptable to the parties;
  - (9) a listing of Grantee’s closings or holidays for the year; and
  - (10) if the Grantee is a corporation, a list of officers and members of the board, a copy of the Grantee’s report to its shareholders (if it prepared such a report), a list of the board members of any parent corporation; and where a parent corporation’s stock is publicly traded, that corporation’s annual report.
- (c) All reports shall be certified as correct by an officer of Grantee and there shall be submitted along with them such other information as the Government may reasonably request with respect to the Grantee’s properties and expenses related to its cable television operations within the confines of Pikeville.

Section 32. FRANCHISE RENEWAL

The franchise granted under this Ordinance may be renewed under the authority of 47 U.S.C. § 546 as it may be amended.

Section 33. RIGHTS OF INDIVIDUALS

- (a) Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, or sex. Grantee shall comply at all times with all other applicable federal, state and local laws, and all executive and administrative orders relating to nondiscrimination. Grantee shall not deny service, deny access, or otherwise discriminate against persons owning or renting apartment units.
- (b) The Grantee shall comply with all applicable nondiscrimination and affirmative action requirements of any laws, regulations and executive directives of the United States, the Commonwealth of Kentucky, and the Government.
- (c) The Grantee shall not discriminate in its employment practices against any employee or Applicant for employment because of race, color, religion, national origin, ancestry, sex, age or physical handicap. The Grantee shall take affirmative action to ensure that employees are treated, during employment, without regard to their age, sex, race, color, national origin, ancestry, or physical handicap. This condition includes, but is not limited to the following: recruitment advertising, employment interviews, employment rates of pay, upgrading, transfer, demotion, layoff, and termination.
- (d) The Grantee shall submit to the Government, upon request, a copy of the Grantee's EEO submissions required to be filed with the FCC.
- (e) Grantee shall comply with all privacy laws of the state or federal government. Grantee shall strictly observe the privacy and property rights of Subscribers. The Subscriber's rights of privacy shall be protected at all times by the Grantee in accordance with applicable law.

Section 34. RATES, MINIMUM TIMING OF REQUESTS AND CITY COMMISSION DETERMINATION OF AUTHORITY

- (a) Grantee shall maintain with the Government a complete listing of fees, charges, deposits and associated terms and conditions of services.
- (b) The Government reserves the right to regulate rates for Cable Services to the fullest extent permitted by federal law and in accordance with such law.
- (c) If regulated under Section 34(b), The Government shall follow the rate regulations promulgated by the FCC and shall provide an opportunity for the consideration of the views of interested parties regarding rate regulations.
- (d) If the City Commission declines rate regulation authority, then rates may be changed by the Grantee by filing with the Clerk of the City Commission a schedule of rates proposed and by notifying its Subscribers in writing at least thirty (30) days prior to implementation of the rate change.

Section 35. SUPERVISION OF THE FRANCHISE

- (a) The City Manager (or his/her designee) shall serve as Cable Communications Officer.
- (b) Notwithstanding other provisions of this Ordinance, the Cable Communications Officer shall have the following duties and responsibilities to supervise the provisions of this Ordinance:
  - (1) Serve as liaison between the Government and the Grantee;
  - (2) Monitor Grantee's adherence to construction and installation schedule and line extension policy;
  - (3) Assure compliance of applicable laws and Ordinances;
  - (4) Monitor operation standards as contained in this Ordinance;

- (5) At the City Commission's direction, arrange tests and analysis of equipment and performance;
- (6) Monitor road and traffic disruptions for construction and repair purposes;
- (7) Assure continuity in service;
- (8) Receive biannually, examine and recommend action on the logs of written citizen complaints;
- (9) Assist in evaluating uses of access channels,
- (10) Receive for examination all data and reports required by this Ordinance; and
- (11) Perform tasks as specified by the City Commission.

Section 36. GOVERNMENT'S RIGHT OF INTERVENTION

The Grantee agrees not to oppose intervention by the Government in any suit or proceeding arising out of the Grantee's performance hereunder.

Section 37. FURTHER AGREEMENT AND WAIVER BY GRANTEE

- (a) Grantee shall have no recourse whatsoever against the Government for any loss, cost, expense or damage arising out of the provisions or requirements of this Ordinance or because of the lawful and reasonable enforcement thereof by the Government or the failure of the Government to have the authority to grant all or part of the franchise.
- (b) Grantee, by acceptance of this franchise, acknowledges that it has not been induced to enter into this franchise by any understanding or promise or other statement, whether verbal or written, by or on behalf of the Government or by any third person concerning any terms and conditions not expressed in this Ordinance.
- (c) Grantee, in conducting the operation or work to be performed pursuant to this Ordinance is not an agent of the Government.

Section 38. PUBLICATION COSTS

The Grantee shall assume the cost of publication of the franchise as such publication is required by law and such is payable upon the Grantee's filing of acceptance of the franchise.

Section 40. LAW GOVERNS

In any controversy or dispute under this Ordinance, federal law and the law of the Commonwealth of Kentucky, if not conflicting, shall apply.

Section 40. SEVERABILITY

If any section, sentence, clause or phrase of this Ordinance is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remainder of the Ordinance.

Section 41. TIME IS OF THE ESSENCE

Whenever this Ordinance sets forth any time for any act to be performed by or on the behalf of the Grantee, such time shall be deemed of the essence and the Grantee's failure to perform within the allotted time shall, in all cases, be sufficient grounds for the Government to invoke the remedies available under the terms and conditions of this Ordinance.

Section 42. FORCE MAJEURE

The Grantee shall not be held in default under, or in noncompliance with the provisions of this Ordinance and Franchise, nor suffer any enforcement or penalty related to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate or control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System is attached, as well as unavailability of materials.

Section 43. EFFECTIVE DATE

This Ordinance shall become effective on the date of its passage.

PASSED CITY COMMISSION OF PIKEVILLE:

/s/Frank Justice

MAYOR

ATTESTED:

/s/Rebecca Hamilton

CITY CLERK

Commissioner Davis made the motion to adopt the ordinance. Commissioner Carter seconded the motion. Mayor Justice called for comments, there being none the ordinance was adopted. 4-0.

**2. Rusty Davis read into record the 1<sup>st</sup> reading of an ordinance per KRS 81A.412 guidelines annexing 17.84 acres of unincorporated territory lying adjacent to the current existing Pikeville City limits boundaries adjacent to Lykins Branch Road.**

**D. City Manager Report: City Manager Donovan Blackburn asked the commission to consider the following requests.**

- 1. Consider a request to cancel the regular commission meeting to be held on October 12, 2009 due to the China Trip. Commissioner Chaney made the motion to approve. Commissioner Davis seconded the motion. Mayor Justice called for comments. Mayor Justice called for further comments, there being none the commission approved. 4-0.**
- 2. Consider a request to approve new job description of Fire/Codes Housing Inspector. Commissioner Carter made the motion to approve the bid. Commissioner Chaney seconded the motion. Mayor Justice called for additional comments, there being none the motion passed unanimously. 4-0.**
- 3. Consider request to approve the submittal of the revised city pay chart. Commissioner Carter made the motion to approve. Commissioner Davis seconded the motion. Mayor called for further discussion, there being none the motion passed unanimously. 4-0.**
- 4. Consider request to accept FEMA 1841 DR KY PUBLIC ASSISTANCE GRANT and all terms set forth therein the amount of \$25,000,000.00; total is for the entire area; City is included in total; for disaster aid for distressed counties impacted by a significant flooding and to authorize the mayor to sign and execute the required forms. Commissioner Chaney made the motion to approve. 4-0. Commissioner Davis seconded the motion. Mayor Justice called for discussion, there being none the motion passed unanimously. 4-0.**
- 5. Consider a request to accept the Pride Grant Award 2009 Roadside PRIDE and all terms set forth therein in the amount of \$1250.00 and authorize the mayor to sign and execute all documents.**

- Commissioner Chaney made the motion to approve. Commissioner Carter seconded the motion. Mayor Justice called for further discussion, there being none the motion passed unanimously. 4-0.
6. Consider request for closed session for discussion of personnel, legal and economic development issues. Commissioner Davis made the motion to adjourn. Commissioner Carter seconded the motion to adjourn. Mayor called for adjournment. 4-0.
  7. Commissioner Carter made the motion to re convene. Commissioner Chaney seconded the motion. Mayor Justice called for discussion, there being none the motion passed unanimously. 4-0. Mayor called the session into order.

#### CONSENT ITEMS

KLC Conference will be held on September 23, 2009 through September 25, 2009. KLC Conference has notified the city that Donovan Blackburn has been nominated for City Official of the year and Ronald Conn has been nominated as City Employee of the year.

KLC Conference will present the City with the Enterprise Award for the City Park.

There being no further business to come before the Commission, Commissioner Davis made the motion to adjourn the meeting. Commissioner Carter seconded the motion. Mayor Frank Justice called for discussion, there being none the meeting was adjourned.

The next scheduled Regular Meeting of the City of Pikeville Board of Commissioners is October 26, 2009 at 6:00 p.m.

APPROVED:

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FRANKLIN D. JUSTICE, II, MAYOR

ATTESTED:

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REBECCA HAMILTON, CITY CLERK